

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

KARL EVERETTS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:07-CV-1056 JCH
	)	
FARMINGTON TREATMENT CENTER,	)	
et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court for the calculation and collection of appellate filing fees pursuant to Henderson v. Norris, 129 F.2d 481 (8th Cir. 1997).

**Background**

On October 15, 2007, this Court granted plaintiff leave to proceed in forma pauperis and dismissed the instant action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). In addition, the Court certified that an appeal from this dismissal would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). On October 24, 2007, plaintiff filed a timely notice of appeal from this Court's October 15, 2007 Order of Dismissal. Plaintiff neither paid the \$455 filing fee nor submitted a motion for leave to proceed in forma pauperis on appeal. Because the Court had previously certified that an appeal taken in forma pauperis would not be taken in good faith, the Court ordered plaintiff to pay the full \$455 filing fee or request leave to proceed in forma pauperis with the Eighth Circuit [Doc. #16]. On December 4, 2007, the Court of Appeals granted plaintiff leave to proceed in forma pauperis on appeal, denied his motion for counsel, and ordered this Court to calculate and collect plaintiff's appellate filing fees.

## **28 U.S.C. § 1915(a)**

Title 28 U.S.C. § 1915(a)(1), (2) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of indigence and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Furthermore, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee.<sup>1</sup> If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. See 28 U.S.C. § 1915 (b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915 (b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

### **Discussion**

Plaintiff did not previously submit a motion for leave to proceed in forma pauperis on appeal or a certified copy of his prison account statement. Because the Court of Appeals has already granted plaintiff leave to proceed in forma pauperis, the Court will order him to submit a certified copy of his prison account statement for the six month period immediately preceding the filing of his notice of appeal pursuant to 28 U.S.C. § 1915 (a)(1)(2).

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<sup>1</sup>The total fee for filing an appeal is \$455. This consists of a \$5 fee, usually referred to as a "filing fee," and a \$450 fee, usually referred to as a "docketing fee." The \$5 fee is required by 28 U.S.C. § 1917 "[u]pon the filing of any separate or joint notice of appeal." The \$450 "docketing fee" is required by resolution of the Judicial Conference of the United States acting pursuant to its authority to determine "[t]he fees and costs to be charged and collected in each court of appeals." 28 U.S.C. § 1913.

In accordance with the foregoing,

**IT IS HEREBY ORDERED** that plaintiff shall file a certified copy of his prison account statement for **the six month period immediately preceding the filing of his notice of appeal on October 24, 2007** within thirty (30) days from the date of this order.<sup>2</sup>

Dated this 10th day of December, 2007.

/s/ Jean C. Hamilton

**UNITED STATES DISTRICT JUDGE**

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<sup>2</sup>When requesting a certified copy of his prison account statement, plaintiff is instructed to inform the Department of Corrections that the account statement must include all activity on his account during the six month period preceding the filing of his notice of appeal on October 24, 2007.